
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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IBA Report Number: 11-27

City Council Docket Date: May 2, 2011

Item Number: 151

Requiring City Council Approval to Terminate Hold Harmless Agreements

OVERVIEW

At the March 2, 2011 Natural Resources and Culture Committee (NR&C) meeting the Environmental Services Department (ESD) presented information regarding the Mayor's plan to terminate certain "hold harmless agreements." These agreements allow for City-provided refuse collection services to residents on private streets that would otherwise be ineligible for such services.

The NR&C passed a motion which included a number of items. First the Committee directed the City Attorney to prepare an ordinance and resolution to override the Mayor's action to terminate the hold harmless agreements. The drafted ordinance, requiring City Council approval to effect termination of the hold harmless agreements, is the subject of City Council docket item number 151, which is scheduled to be heard May 2, 2011. If, on May 2, Council approves this ordinance for a second reading, and subsequently passes this ordinance at the second reading, the resolution to rescind termination of the hold harmless agreements could then be enacted.

The second item of the motion was that a request to the Budget and Finance Committee Chair be made to docket a discussion regarding the fiscal impacts related to refuse collection services to hold harmless customers. The fiscal impacts are presented in the FY 2012 Proposed Budget and are discussed in this report.

Third, the City Attorney was directed to prepare a memorandum exploring whether providing refuse collections services to hold harmless customers constitutes a gift of

public funds. The City Attorney response was presented in an April 7, 2011 report to the Mayor and City Council, and is discussed later in this report.

Also, the City Attorney was directed to prepare a memorandum regarding the City's ability to charge for refuse collection. The City Attorney is currently working on a memorandum in response to this issue. This issue has not been noticed for discussion on May 2, 2011.

Lastly, City staff was directed to prepare a report regarding the potential for low-income and senior discounts on refuse collection services provided by franchised refuse haulers. In a February 22, 2011 memorandum to the City Council President and City Council Members, staff noted that the current refuse hauler franchise agreements do not require that such discounted rates be provided by the haulers. Staff indicated that haulers do offer senior rates in some communities. Additionally, there are discounted rates for pick-up of smaller size containers.

The remainder of this report addresses the City Council's May 2, 2011 docket item, which involves Council consideration of the ordinance that would enable Council to override the Mayor's action to terminate the hold harmless agreements. Note that a subsequent resolution would be required to actually rescind the termination of these agreements.

FISCAL/POLICY DISCUSSION

The People's Ordinance, adopted by San Diego voters in 1919, requires the City of San Diego to collect, transport and dispose residential refuse, and prohibits the City from charging a fee for this service. In general, to be eligible for City-provided refuse collection, the residential property must be located on, addressed on and contiguous to a dedicated public street or dedicated public alley, in accordance with City regulations. The People's Ordinance prohibits the City from entering a private street to collect residential refuse, unless a hold harmless agreement is in place.

Existing hold harmless agreements have termination clauses, and the Mayor currently has authority to terminate these agreements (upon seven-day notice of such intent). The City exercised the termination clauses of these agreements on February 4, 2011. Refuse collection services to an estimated 14,200 residential units on private streets is scheduled to be eliminated July 1, 2011.

Outreach to the impacted residents and their homeowners' associations is currently being conducted, and work toward the elimination of these services is progressing on schedule. Annual cost reductions for elimination of trash collection services are included in the Environmental Services Department's (ESD) FY 2012 General Fund budget and total \$818,974. Additionally, a net positive impact of \$66,939 for elimination of recycling and greenery collection services is included in the FY 2012 Recycling Fund budget.

Furthermore, a revenue increase in franchise fees from private haulers (\$187,620 in General Fund revenue) is also budgeted.

On April 7, 2011, the City Attorney provided a report regarding whether providing refuse collections services to hold harmless customers constitutes a gift of public funds. In short, the City Attorney has advised that “reinstating residential refuse collection services provided pursuant to hold harmless agreements probably would not constitute a gift of public funds, so long as the City Council’s action becomes effective before the effective date of the Mayor’s termination of the agreements.”

Thus, on May 2, 2011, the Council will be considering the proposed ordinance that would enable Council to override the Mayor’s action to terminate the hold harmless agreements. Enough time must be provided so that the ordinance becomes effective prior to the effective date of the hold harmless agreement termination (which is July 1, 2011). Note that a subsequent resolution would be required to actually rescind the termination of these agreements.

The City’s Structural Deficit

The Mayor’s Five-Year Outlook for FY 2012-2016, issued February 7, 2011, shows annual General Fund deficits ranging from \$56.7 million for FY 2012 improving to \$8.8 million in FY 2016. However, these numbers did not address full payment of the City’s retiree health care ARC and did not include sufficient funding to address the City’s backlog and ongoing deferred capital needs.

In developing his proposed FY 2012 budget, subsequent to issuance of the Five-Year Outlook, the Mayor addressed two major expenditure issues: 1) restoration of all eight browned-out fire engines at a FY 2012 cost of \$8.7 million and 2) corrections to departmental vacancy savings and other technical adjustments which required \$7.8 million. These items together with the original projected deficit of \$56.7 million increased funding needs for FY 2012 to \$73.2 million.

In incorporating the costs to restore the Fire brown-outs, the Mayor responded to the City Council’s top service priority identified in their Budget Resolution Number 306758 adopted April 12, 2011. Branch library and recreation center hours are two of the major areas cut back in the FY 2012 Proposed Budget. Other City operations have been reduced as well.

Despite the reductions made in the FY 2012 Proposed Budget, the City is still facing a structural imbalance. The FY 2012 Proposed Budget has been balanced utilizing \$35.1 million in one-time solutions. Given the fiscal constraints of the City, the IBA supports the FY 2012 proposed action to eliminate collections services for hold harmless customers, which would provide ongoing savings.

Inequity in City Refuse Collections Services

Since the People's Ordinance prohibits the City from entering a private street to collect residential refuse, unless a hold-harmless agreement is in place, most multi-family and some single family residences are ineligible for City-provided refuse collection services. It has been estimated that approximately 40% of San Diego residences are ineligible for refuse collection services. These residents, as well as most businesses, pay for private collection services.

Private haulers pass the cost of collection services, which include fees paid to the City, onto their customers. Thus, private hauler customers – City residents and businesses that are ineligible for City-provided collection services – are effectively paying City fees related to refuse collection and disposal. Such fees include refuse hauler franchise fees, tipping fees (which support Miramar Landfill), and AB 939 recycling fees. Furthermore, the AB 939 recycling fees partially subsidize City-provided recycling collection services for eligible residents and businesses.

Any amounts paid to private haulers by residents and businesses that are ineligible for City-provided collection services are in addition to General Fund taxes and fees they pay as members of the public (such as property and sales taxes). Thus, the People's Ordinance gives rise to the inequitable provision of City refuse collection services among San Diego residents.

CONCLUSION

The IBA acknowledges that in the current financial environment, it is difficult to balance competing priorities and define core city services. Due to the fiscal constraints of the City, the IBA supports the FY 2012 proposed action to eliminate collections services for hold harmless customers. Given that the Mayor's Proposed Budget is balanced utilizing this action, the Council will need to identify \$1.0 million in alternative reductions or resources (General Fund) should the hold harmless agreements remain in place.

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